

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SOMPO JAPAN INSURANCE COMPANY OF AMERICA, and SOMPO JAPAN INSURANCE, INC.

Plaintiffs,

- against -

NORFOLK SOUTHERN RAILWAY COMPANY, NORFOLK SOUTHERN CORPORATION, and THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Defendants.

NO.: 07 CIV. 2735

JUDGE CHIN

DECLARATION OF CHRIS D. LUEBBERS IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

1. I, Chris D. Luebbers, do hereby declare under penalty of perjury that I am competent to testify, and that the statements below are true and correct based on my personal knowledge.

2. I am currently employed by Norfolk Southern Railway Company ("Norfolk Southern") as Group Manager International Marketing, and as such am authorized to sign this Declaration on behalf of Norfolk Southern.

3. I have reviewed Norfolk Southern's "miscellaneous waybills" attached as an Exhibit to the Declaration of Thomas Eagan ("NSR's Waybills"), and also the BNSF Railway's "railhighway waybills", ("BNSF's Waybills"; collectively, "the Railroads' Waybills"), which are attached to the Declaration of Charles L. Howard.

4. For all of the containers but one, the Railroads' Waybills identify Yang Ming as the shipper, the consignee, and the party responsible for paying Norfolk Southern's freight charges.

5. For the remaining container, the Railroads' Waybills identify NYK Line as the shipper, consignee, and the party responsible for paying Norfolk Southern's freight charges.

6. All of the BNSF Waybills indicate that Accounting Rule 11 is to be applied to the railroads' billing for the shipment. A Rule 11 shipment is a shipment for which each of the railroads involved in transporting the freight will issue a separate freight bill to the party responsible for such billing for that portion of the movement in which the billing railroad was involved. In this instance, BNSF would have billed Yang Ming and NYK Line for the rail services it provided in moving the containers from Long Beach, California to Dallas, Texas. Norfolk Southern would have billed Yang Ming and NYK Line for the rail services it provided in moving the containers from Dallas, Texas to Austell, Georgia.

7. All of the Railroads' Waybills identify the rail routing of the containers as "BNSF – DALAS [sic] – NS." That routing description means that the containers would move from origin on the BNSF to an interchange point in Dallas, Texas. There, the containers would be transferred to the Norfolk Southern operations for shipment to destination.

8. I am also familiar with (1) the "Intermodal Transportation Agreement" to which Norfolk Southern and Yang Ming are parties ("YMITA") and the "Intermodal Transportation Agreement" to which Norfolk Southern and NYK Line are parties ("NYKITA"), both of which are attached as exhibits to the Declaration of Charles L. Howard.

9. With respect to Norfolk Southern's involvement with transporting the containers, the Railroads' Waybills identify Dallas, Texas as the origin point of the containers and Austell, Georgia as the destination point of the containers. The terms and conditions of the YMITA apply to rail shipments of containers tendered to Norfolk Southern by Yang Ming from Dallas to Atlanta, Georgia and provides rates for such moves. Pursuant to the parties' past practices and

understandings, Norfolk Southern charges Yang Ming (and Yang Ming pays) the same rates for Dallas – Austell movements as it does for Dallas – Atlanta movements. The terms and conditions of the NYKITA apply to rail shipments of containers from Dallas to Austell, Georgia and provides rates for such moves.

FURTHER AFFIANT SAYETH NAUGHT:



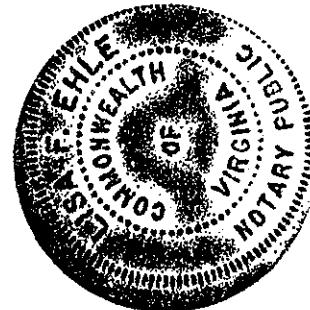
Chris D. Luebbers

Norfolk Southern Railway Company

Executed this 18th day of September, 2007.

City / County of Norfolk
Commonwealth / State of Virginia
The foregoing instrument was acknowledged
before me this 18 day of September
2007, by Chris D. Luebbers
(Name of person seeking acknowledgement)
Notary Public
My commission expires: June 30, 2009

11304163



CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify that on September 21, 2007, a true and correct copy of the foregoing Declaration of Chris D. Luebbers in Support of Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment was filed electronically. Notice of this filing will be sent to the following party, listed below, by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

David T. Maloff, Esquire
Thomas M. Eagan, Esquire
MALOFF BROWNE & EAGAN LLC
411 Theodore Fremd Avenue, Suite 190
Rye, New York 10580-1411

Attorneys for Plaintiffs

By: /s/ Charles L. Howard
Charles L. Howard